HIGH COURT OF UTTARANCHAL AT NAINTAL.

Writ Petition No. 527 of 2005 (SS)

Satish Chandra Sharma ..... Petitioner

Versus

1. Uttaranchal Transport Corp.
2. General Manager (Administration), Uttaranchal Transport Crop. Dehradun.
3. Regional Manager, Uttaranchal Transport Corp. Tanakpur, District Champawat .....Respondents

Manoj Tiwari, Advocate for the petitioner.
Mr. Ashish Joshi, Advocate for the respondent.

Dated: 11.5.2005

Hon'ble Mr. Justice Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 15.2.2005 passed by the respondent no.2.

Briefly stated the petitioner is servicing as Assistant Traffic Inspector in Uttaranchal Transport Corporation and posted at Tanakpur Depot. He has submitted that he actively participated in the Roadways Karmchari Sanyukt Parishad which is a Trade Union of the employees of the corporation. The petitioner has also held various offices in the said Union ever since 1972. The petitioner has further stated that he is resident of District Bulandshahar U.P. His only daughter is a student of M.Sc. in Meerut University. In this view also Tanakpur is more suitable for him and in case of his transfer to remote hill area of

Uttaranchal, it would be difficult for him to look after his family.

So far as the transfer order is concerned no interference can be made under Article 226 of the Constitution of India. An order of transfer of an employee is a part of the service conditions an such order of transfer is not required to be interfered if the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.

It has been held by the Apex Court in the case *Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532 as under:*

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of male fide. A Government servant holding a transferable post has no vested right to remain posted with at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead effected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

Further the apex Court in State of U.P.v. Goberdhan Lal (2004)11 SCC 402 has observed as under:

"A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reasons that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

It is well settled that the transfer is an exigency of service. However option for the petitioners to approach the higher authorities is available and the petitioners are at liberty to approach the higher authority.

Liberty is, therefore, given to the petitioner to make representation to the appropriate higher authority within 15 days after receipt of the certified copy of this order, who shall decide the same within a month thereafter. The order of transfer shall remain in abeyance for a period of one and a half month only.

With the observations, made above the writ petition is disposed of. No order as to costs.

(R.T., J.)

11.5.2005

Dhyani